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IN THE

Supreme Court of the United States

October Term, 1958

No. 771

WILLIAM GERT, ADA BASS, HARRY MYERS, SOPHIE BERGMAN, GEORGE KAY d/b/a Lorac Press, WILLIAM LOEBNER, HOWDIBON GARAGE CO. INC., SCHUCKMAN PRESS, INC., 145-147 W. 61st CORPORATION, individually and on behalf of all others similarly situated,

Petitioners,

against

ALBERT M. COLE, as Administrator, Federal Housing and Home Finance Agency; WALTER S. FRIED, as Regional Administrator, Region 1, Federal Housing and Home Finance Agency; CITY OF NEW YORK; ROBERT F. WAGNER, individually and as Mayor of the City of New York and a member of the Board of Estimate; ABE STARK, individually and as President of the City Council of the City of New York and a member of the Board of Estimate; HULAN E. JACK, individually and as President of the Borough of Manhattan, City of New York, and a member of the Board of Estimate; JAMES J. LYONS, individually and as President of the Borough of Bronx, City of New York, and a member of the Board of of Estimate; JOHN CASHMORE, individually and as President of the Borough of Brooklyn, City of New York, and a member of the Board of Estimate; JAMES J. CRISONA, individually and as President of the Borough of Queens, City of New York, and a member of the Board of Estimate; ALBERT V. MANISCALCO, individually and as President of the Borough of Richmond, City of New York, and a member of the Board of Estimate; ROBERT MOSES, individually and as Chairman of the Committee on Slum Clearance of the City of New York; FORDHAM UNIVERSITY; LINCOLN CENTER FOR THE PERFORMING ARTS, INC.; and WEBB & KNAPP LINCOLN SQUARE CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No.

WILLIAM GART, *et al.*,

Petitioners,

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ALBERT M. COLE, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

WILLIAM GART, ADA BASS, HARRY MYERS, SOPHIE BERGMAN, GEORGE KAY, WILLIAM LOEBNER, HOWDIBON GARAGE, CO., INC., SCHUCKMAN PRESS, INC., and 145-147 W. 61st Street Corporation, petitioners herein, pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered on January 16, 1959, which affirmed the judgment of the District Court of the Southern District of New York entered on August 5, 1958 granting respondents' motion for summary judgment and dismissing petitioners' complaint.

Opinions Below

The opinion of the Court of Appeals has not been officially reported but is set forth in Appendix B, *infra*, pp. 26-36.

The opinion of the District Court is reported at 166 F. Supp. 129 and is also set forth in Appellants' Appendix as printed for the use of the Court below. (pp. 156a-165a)[1]

Jurisdiction

The judgment of the Court of Appeals was entered on January 16, 1959. The jurisdiction of this Court is invoked under Title 28, U.S.C., Section 1254.

Questions Presented

1. Whether in the circumstances of this case, the action of the Federal Housing and Home Finance Agency in granting Federal approval to the Lincoln Square Urban Renewal Project is in violation of the "establishment of religion" clause of the First Amendment to the Constitution of the United States?

2. Whether under the provisions of Title I of the Housing Act of 1949, 63 Stat. 413, as amended, 42 U.S.C. Sections 1441 et seq., tenant petitioners had a right to be heard and present testimony before the Federal Housing and Home Finance Agency in support of their objections to the relocation plan of the Lincoln Square Urban Renewal Project?

Constitutional and Statutory Provisions Involved:

The Constitutional provisions involved are the First and Fifth Amendments to the Constitution of the

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[1] The page references designated by the letter "a" as used throughout, refer to the Appendix to Appellants' Brief as printed for the use of the court below.

United States. The statutes involved are Title I of the Housing Act of 1949, 63 Stat. 413, as amended, 42 U.S.C. Sections 1441 et seq.; and Section 5 of the Administrative Procedure Act of 1946, 60 Stat. 239, 5 U.S.C. Section 1004. All relevant portions of the Constitutional and statutory provisions are set forth in Appendix "A", *infra*, at pp. 17-25.

Statement of the Case

A. The Parties.

Petitioners are residential tenants, business tenants or owners of real property in that portion of the West Side of Manhattan in the City of New York which has been designated as the Lincoln Square Urban Renewal Area.

Respondents are Albert M. Cole, Administrator of the Federal Housing and Home Finance Agency and Walter S. Fried, Regional Administrator of Region I which region includes the City of New York within its territorial jurisdiction.

Respondents also include the City of New York, officials of the City of New York and sponsors and redevelopers of the Lincoln Square Urban Renewal Project. While they are named herein as respondents, this petition is not directed to that portion of the judgment of the court below which affirmed the District Court's dismissal of the complaint as to these respondents on the grounds that a judgment in a prior state court action in which they were parties, was res judicata. Plaintiffs in the State Court action petitioned this Court for a writ of certiorari on First and Fourteenth Amendment grounds, but the petition was denied.[2]

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[2] *64th Street Residences, Inc. et al, v. City of New York et al.*, 4 N. Y. 2d 268, affirming 5 A. D. 2d 824, cert. den. sub. nom. *Harris et al.* v. *City of New York et al.*, 357 U. S. 907.

B. The Lincoln Square Urban Renewal Plan

In 1954 the Committee on Slum Clearance of the City of New York requested and obtained federal planning funds under Title I of the Housing Act of 1949 for an urban renewal study of the Lincoln Square area. In 1955, after an initial study had been made, the Committee solicited sponsors to redevelop the area. One of the sponsors selected was Fordham University which assured the city that it would purchase a site in excess of 300,000 square feet for collegiate purposes. After the selection of sponsors, redevelopment and site plans were formulated which incorporated the sponsors' proposed uses as specific "reuse" restrictions for site redevelopment. (11a-19a, 35a, 38a)

On May 28, 1956, the Committee on Slum Clearance submitted its report to the Mayor and the Board of Estimate in which Fordham University was designated as tentative sponsor for a specifically defined area, and the Committee stated that Fordham would redevelop this area by erecting a group of school buildings, comprising the schools of law, education, business and social service. (14a)

On September 27, 1956, the Board of Estimate granted the Committee authority to present and further process the plan with the Federal Urban Renewal Administration. (12a, 39a-40a)

On November 12, 1956, petitioners Schuckman Press, Inc. and Howdibon Garage Co. Inc., along with a number of residential tenants in the Lincoln Square area, petitioned the Federal Housing and Home Finance Administrator to "intervene and be heard on behalf of themselves and all others similarly situated" with respect to the Lincoln Square Urban Renewal Project. The petition raised questions regarding the adequacy of the proposed relocation plan and its failure to comply with the statutory requirements of Title I of the Housing Act of 1949 and further contended that the renewal plan contemplated the giving of federal and state financial aid and subsidy to

religious organizations. (15a-17a, 63a-67a) However, on November 20, 1956, the Federal Housing and Home Finance Administrator denied the petitioners an opportunity to intervene and be heard with respect to these objections to the project, and this denial was confirmed by letter dated January 22, 1957. (17a, 70a)

On October 2, 1957, after a local hearing, the City Planning Commission approved the final plan as an entity and referred it back to the Board of Estimate for further processing. (18a-19a, 41a) On October 25, 1957, the Board of Estimate held its hearing, and on November 26, 1957, the Board passed a series of resolutions approving (1) the Lincoln Square Urban Renewal plan in its entirety, (2) the acquisition of the project area, (3) the execution of a capital grant contract with the Federal Government, and (4) the sponsorship agreements with the various sponsors, including Fordham University.

The agreement wtih Fordham University obligated Fordham to bid a minimum amount of $2,241,610 at the public auction, and, if successful, to redevelop the site in accordance with the terms of the redevelopment plan. In turn, the City obligated itself to acquire the site by purchase or condemnation and to sell it to Fordham if it was the highest bidder at the public auction held pursuant to Section 72-k of the New York General Municipal Law. (18a-19a)

The site for which Fordham had been the sponsor was subject to a reuse restriction upon potential bidders that the site be used only for redevelopment for educational purposes with campus type structures and layout. In addition to the educational site, the redevelopment plan contained a substantial site restricted to redevelopment as a performing arts center with required erection of a concert hall and opera house. The sponsor for this site was Lincoln Center for the Performing Arts, Inc., a non-profit corporation, which had been specifically organized for this purpose.

There was also a housing site sponsored by the Webb & Knapp Lincoln Square Corporation.

The minimum price which Fordham had agreed to bid was $7.00 a square foot, an amount which had been reached after negotiation between the City of New York and Fordham University. A similar minimum bid was negotiated for the housing site and the minimum bid for the performing arts center was established at $10.60 per square foot. (13a, 19a-20a, 44a)

On December 26, 1957, the Federal Housing and Home Finance Administrator, without a hearing, approved the plan and the proposed capital grant contract, giving no notice to those who had previously petitioned to intervene and be heard.

On the morning of February 28, 1958 the City obtained title to the Lincoln Square site by order of condemnation. While the amount to be paid by condemnation awards had not yet been fixed by the Supreme Court of the State of New York, the approximate cost of site acquisition, as estimated by the Committee on Slum Clearance is $16.00 per square foot. On the afternoon of February 28, 1958 the designated sites were auctioned subject to the foregoing "re-use" restrictions. The only bidders were the designated sponsors. The amounts bid were the minimum prices previously established by the sponsorship agreements. (20a, 37a, 54a) It could hardly have been otherwise, for the City was well aware that Fordham University and Lincoln Center for the Performing Arts, Inc. were the only conceivable bidders who could use the sites as restricted. (42a-43a)

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[3] In every Title I project in the City of New York, including the Lincoln Square project, the "public auction" requirements of Section 72-k of the New York General Municipal Law have been demonstrated to be idle form. The only purchasers at "public auction" have been the previously designated sponsors. The price bid has been the previously negotiated price. In fact, no bid has ever been submitted by any other than the designated sponsor. (50a-53a)

Fordham University is conducted by members of the Society of Jesus, a religious order of the Roman Catholic Church, and while enrollment is not limited to students of the Roman Catholic faith, a complete program of religious education and indoctrination in that faith is conducted. (34a, 38a)

C. Court Proceedings

The complaint in this action was filed on June 16, 1958 with the Clerk of the United States District Court for the Southern District of New York. The summons and complaint was served upon all defendants between June 17, 1958 and June 20, 1958.

Thereafter, the defendants moved to dismiss the complaint and for summary judgment and plaintiffs moved for a preliminary injunction. On August 5, 1958 the opinion of the District Judge (Dimock, J.) granting defendants' motions to dismiss the complaint and for summary judgment and denying plaintiffs' motion for a preliminary injunction, and judgment was entered accordingly on that day.

On August 28, 1958 plaintiffs filed a notice of appeal from the order and judgment of the District Court, and on January 16, 1959, the Court of Appeals for the Second Circuit rendered its opinion and judgment affirming the order and judgment of the District Court.

On February 11, 1959, an order was made and filed making the judgment of the Court of Appeals, the judgment of the District Court.

Federal jurisdiction in the court of first instance was based upon §§ 1331, 2201 and 2202 of Title 28, U.S.C.; § 1456(c)(1) of Title 42, U.S.C.; § 1009 of Title 5, U.S.C.; and upon the First, Fifth and Fourteenth Amendments to the Constitution of the United States and on Articles I and III thereof.

Reasons for Granting the Writ

The issues which this Court is asked to decide have not been settled by the Court and are fundamental to the present and future implementation of the "Housing Act of 1949", 63 Stat. 413, as amended, 42 U.S.C. §§ 1441 et seq., and the operation of the Act within a statutory and constitutional framework.

The decision of the Court of Appeals permits federal sanction to be granted and federal funds to be used for the benefit of an admittedly sectarian institution in violation of the First Amendment to the Constitution of the United States. Moreover, the Court of Appeals has reached this result by holding that petitioners are barred from litigating in the federal courts, a cause of action against a federal official, arising solely under a statute and the Constitution of the United States, because of a prior state court decision which passed upon issues involving the same Constitutional provision and its effect upon the action of state officials. The Court of Appeals arrived at this holding notwithstanding the fact that the federal official was not and could not have been made a party to the state court litigation, and that the question regarding the use of federal funds was not and could not have been raised in the state courts.

Wholly independent of the question of First Amendment prohibitions, the Court of Appeals decision would permit the frustration of Congressional intent and the denial of "due process of law" in the increasingly important area of slum clearance and urban redevelopment. For while the Congress has been zealous in enacting legislation which is protective of the rights of persons who are displaced by federally supported urban renewal, and has provided minimal relocation requirements as a prerequisite to federal approval and support of urban renewal projects, the Federal Housing Administrator's refusal to hear rep-

resentatives of the protected tenant class with respect to the adequacy of a locally formulated relocation plan, has effectively stripped the protected class of its protection. The denial of an opportunity to intervene and be heard was in violation of Title I of the Housing Act of 1949, as amended, Section 5 of the Administrative Procedure Act of 1946, 60 Stat. 239, 5 U.S.C. § 1004, and the "due process" clause of the Fifth Amendment to the Constitution of the United States.

I

The Court of Appeals has decided federal questions of substance not heretofore determined by this Court or in a way in conflict with applicable decisions of this Court.

A. The question arising under the "establishment of religion" clause of the First Amendment.

Under Title I of the Housing Act of 1949, 63 Stat. 413, as amended, 42 U.S.C. § 1441 *et seq.*, Congress attempted to meet the problem of slum clearance by subsidizing the cost of clearing blighted or deteriorating land in central areas of the Nation's major cities on a two-to-one sharing formula, "the Federal Government making up two-thirds of the loss and the local government making up one-third." *S. Rep. No. 84 on S. 110*, 81st Cong., 1st Sess., at p. 13 (1949). The purpose of "Title I" was to subsidize and encourage private enterprise to clear and redevelop slum areas.[4]

At issue in this case is the question of whether the predetermination of Fordham University's participation as a redeveloper and the certitude that it would receive

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[4] *S. Rep. No. 84 on S. 110*, 81st Cong., 1 Sess. pp. 10-15 (1949); *H. Rep. No. 590 on H. R. 4009*, 81st Cong., 1st Sess., pp. 13-17 (1949); *S. Rep. No. 1472 on H. R. 7839*, 83rd Cong., 2d Sess., pp. 35-41 (1954); *H. Rep. No. 1429, on H. R. 7839*, 83rd Cong., 2d Sess., pp. 22-25 (1954).

aid and benefit by reason of such participation, both of which were implicit in the Lincoln Square Urban Renewal Plan, would preclude federal approval of that plan and the use of federal funds for its implementation.

Petitioners contend that in this factual context, the actions of the Federal Housing Administrator in approving the Lincoln Square Urban Renewal Project and executing the capital grant contract were prohibited by the First Amendment to the Constitution of the United States.

While the decision of the Court of Appeals for the Second Circuit did not directly hold that such action was valid, it did adopt the opinion of the New York Court of Appeals which dealt with First Amendment prohibitions upon officials of the City of New York who were furthering the Lincoln Square Project,[5] but the Federal Housing Administrator was not and could not have made a party to the state court litigation, nor would the state court pass upon actions of the Fordham Administrator. See, *Hunter* v *City of New York*, 121 N. Y. 2d 841.

The proposition that federal funds cannot be used to support religious activities or institutions is not subject to question or doubt. Cf. *Everson* v. *Board of Education*, 330 U. S. 1; *McCollum* v. *Board of Education*, 333 U. S. 203; *Zorach* v. *Clauson*, 343 U. S. 306.

The Lincoln Square Urban Renewal Plan, and the reuse restrictions contained within that plan, were adopted for the specific purposes of the redevelopment sponsors including Fordham University, and while the plan required a "public auction" before Fordham could take title to the property, it was factually apparent that such an auction was an empty gesture, devoid of significance. While it was legally possible for other bidders who might have been interested in erecting a vast educational institution or an opera house and concert hall to appear at the public auction

[5] See footnote 2, *supra*.

and enter higher bids, such a possibility was precluded as effectively as if the City of New York had declared all bidders ineligible, other than the designated sponsors.

Here, where the provisions of the plan and the sponsorship contract provided for the sale of an educational site to Fordham University for a sum about 3½ million dollars less than its cost of acquisition (two-thirds of which is payable by the federal government) and land use restrictions which lowered the land value were adopted with Fordham University—and only Fordham University—in mind and in contemplation, federal support and approval were prohibited by principles of separation of church and state based upon the "establishment of religion" clause of the First Amendment.

Vast amounts of federal monies are being and will be expended in subsidy of urban renewal programs. Petitioners do not believe that the question presented has ever been settled by this Court unless that portion of the opinion in *Berman* v. *Parker*, 348 U. S. 26, 34-35, which states that it was within the power of Congress to authorize the District of Columbia Land Redevelopment Agency to attack the problem of Slum Clearance on an area or regional basis and to redesign the area "so that a balanced integrated plan could be developed for the region, including not only new houses but also schools, churches, parks, streets and shopping centers", may be taken to mean that churches (and other religious institutions) may participate as urban redevelopers, and pay less than market value, or even nothing, for the land which they redevelop.

B. The Question Involving An Opportunity to be Heard and Present Testimony in Support of the Objections to the Relocation Plan.

The Court of Appeals held that "[petitioners] do have standing in this action to challenge the Administrator's refusal to grant them an oral hearing on the feasibility

of the City's relocation plan". But having so held, the Court went on to say, "there is no basis, statutory or otherwise, for the right to appear and be heard before the Administrator which [petitioners] claim," and that the receipt of the petition by the Federal Housing and Home Finance Agency was all that the Housing Act required.

While it is true that the Housing Act specifies only a hearing before a local public agency,[6] the municipalities which propose an urban renewal project are normally so zealous in their efforts to improve the urban vista, that their relocation plans are inadequately formulated and are adopted without evidence of compliance to the minimal statutory standards. Experience has shown that such plans have not been and cannot be implemented, and it may truly be said that slum clearance today is but slum transference.

The relocation requirement that there be decent, safe, and sanitary dwellings equal in number to and available to displaced families which are not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area,[7] has been totally disregarded by both the local public agency and the Federal Housing Administration.[8]

Here petitioners Schuckman Press, Inc. and Howdibon Garage Co., Inc., along with the residential tenants who

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[6] Title I § 105, 63 Stat. 416, as amended, 42 U. S. C. § 1455(d).

[7] Title I § 105, 63 Stat. 416, as amended, 42 U. S. C. § 1455(c).

[8] *Note: Urban Renewal: Problems of Eliminating Slums and Preventing Urban Deterioration, 72 Harvard Law Review 504, 515,* suggesting that the failure of local hearings to be more effective may be attributable in part to unwillingness of administrators to modify a course of action once adopted, especially since hearings are usually held at a late stage in the progress of the plan and that generally there is no right of cross-examination at local hearings but only one of rebuttal.

sought to intervene and be heard by the Federal Agency "on behalf of themselves and all others similarly situated," sharply contested the City's relocation evidence. Since the Federal Housing Administrator denied these tenants an opportunity to demonstrate that the City's findings and documentation were spurious, he stripped the protected class of its only real protection and barred it from its only avenue of redress.

While the Circuit Court held that petitioners had standing to sue, and based this determination upon the statutory protection enacted specifically for the benefit of the tenant class, the Court then proceeded to create the curious anomaly that although there was standing to sue in the courts, there was no standing to effectively pursue an administrative remedy prior to resort to the courts.

Section 5 of the Administrative Procedure Act of 1946 requires "notice and hearing" in every case of "adjudication required to be made upon the record after opportunity for agency hearing." 60 Stat. 239, 5 U. S. C. § 1004. In *Cates* v. *Haderlein*, 342 U. S. 804, reversing (7 Cir.), 189 F. 2d 369, the Supreme Court held that a determination under statutes permitting the Postmaster General to issue fraud orders "upon evidence satisfactory to him," 39 U. S. C. §§ 259, 732, was an "adjudication required by statute to be determined on the record after opportunity for an agency hearing." In *Riss & Co.* v. *United States*, 341 U. S. 907, reversing (D. C., Mo.), 96 F. Supp. 452, it held that a determination under Section 207(a) of the Interstate Commerce Act, 49 U. S. C. § 307, authorizing an issuance of a certificate of public convenience and necessity "to any qualified [motor carrier] if it is found that the applicant is fit, willing and able to properly perform the service proposed * * *" was an "adjudication required to be made upon the record after opportunity for agency hearing." And in *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, a determination of deportability under Section 19(a)

of the Immigration Act of 1917, 39 Stat. 874, 8 U. S. C. § 155(a), which provided that "any alien who shall have entered or who shall be found in the United States in violation of this Act * * * shall upon the warrant of the Attorney General be taken into custody and deported," was held to be an "adjudication required by statute to be determined on the record after opportunity for an agency hearing." Accordingly, we think it clear that the Administrator's determination under Section 101(c) of the Housing Act of 1949, which prohibits the making of federal loans or grants unless "on the basis of his review * * * the Administrator determines that [the Project], meets the requirement of this subsection * * *," 63 Stat. 414, 42 U. S. C. § 1451(c), was also an "adjudication required by Statute to be determined on the record after opportunity for an agency hearing." Cf. *Door* v. *Donaldson* (D. C. Cir.), 195 F. 2d 764, 765-766.

The Court of Appeals nevertheless held that because the number of residents affected by the Lincoln Square Project was large, the determination was not such an adjudication of individual interests as might justify the implied application of Section 5 of the Administrative Procedure Act. We think that such a conclusion begs the question, and must lead to the absurd result that when only five residents are to be relocated under a particular Title I project, there is a right to a plenary hearing, but where five thousand are so affected, a hearing must be denied. Here the impact is not upon a group, but upon an aggregation of individuals each one of whom may separately claim his right and his protection.

Moreover, the Administrator's sole reliance on the challenged findings and documentation submitted by the City was arbitrary in the very sense of the holding in *ICC* v. *Louisville & N.R. Co.*, 227 U. S. 88, where the Supreme Court said: "A finding without evidence is arbitrary and baseless * * * It would mean that where rights depended

upon facts [the Administrator] could disregard [them] * * * and capriciously make findings by administrative fiat. Such authority * * * is inconsistent with rational justice and comes under the Constitution's condemnation of all arbitrary exercise of power." *Id.*, at page 91. Inherent in the determination which the statute required the Administrator alone to make was the "process of reasoning". *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 136. Yet, when he refused to hear the evidence proffered by the residential and business tenants in the area, accepting instead the findings of the New York City Planning Commission, he engaged in no "process of reasoning," he simply adopted the reasoning supplied him by the local public agency. Such action was patently arbitrary and capricious. See, *Accardi* v. *Shaughnessy*, 347 U. S. 260; *United States* v. *Abilene & S. Ry. Co.*, 265 U. S. 274, 287-289; *Gonzales* v. *United States*, 348 U. S. 407, 412-416; *Kutcher* v. *Gray* (D. C. Cir.), 199 F. 2d 783, 787-788; *Shachtman* v. *Dulles* (D. C. Cir.), 225 F. 2d 938, 943-944.

The Federal Administrator's denial of the petition to "intervene and be heard" and his subsequent approval of the project stripped plaintiffs of the relocation safeguards enacted for their benefit in Section 105(c) of the Act, 63 Stat. 416, 42 U.S.C. § 1445(c), and as a practical result,

> "required [the tenants either] * * * to move themselves and their possessions to another abode, which might be difficult or impossible to obtain, or undertake defense of eviction proceedings in a state court, which proceedings, but for the [Administrator's] approval, would have been barred under the Act." *Parker* v. *Fleming*, 329 U. S. 531, 537-538.

In these circumstances, his action in approving the project and in denying petitioners an opportunity to be heard and to present testimony was arbitrary and capricious and constituted a violation of either Section 5 of the

Administrative Procedure Act of 1946 or the basic elements of "due process of law." See, *Wong Yang Sung* v. *McGrath*, 339 U. S. 33.

CONCLUSION

The fundamental importance of this case is heightened by the fact that hundreds of families have already been evicted from the Lincoln Square Urban Renewal Area without relocation to decent, safe and sanitary dwellings within their financial means, and that thousands more will meet a similar fate.

At issue are the questions of the participation of religious organizations as the recipients of federal largess through federal contributions to urban renewal as well as the rights of those who are being relentlessly removed from their homes by urban renewal.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX "A"

Constitution

FIRST AMENDMENT

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Statutes

Section 2 of the Housing Act of 1949, 63 Stat. 413, 42 U.S.C. § 1441.

"The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the devel-

opment of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural non-farm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid * * *. The Housing and Home Finance Agency and its constituent agencies, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist * * * (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities * * *."

Title I, Section 100 of the Housing Act of 1949, as amended, 68 Stat. 622, 42 U.S.C. § 1450.

"The authorizations, funds, and appropriations available pursuant to sections 1452 and 1453 of this title shall constitute a fund, to be known as the 'Urban Renewal Fund,' and shall be available for advances, loans, and capital grants to local public agencies for urban renewal projects in accordance with the provisions of this subchapter * * *."

Appendix "A"

Title I, Section 101 of the Housing Act of 1949, 63 Stat. 414, as amended, 42 U. S. C. § 1451.

"(a) In entering into any contract for advances for surveys, plans and other preliminary work for projects under this subchapter, the Administrator shall give consideration to the extent to which appropriate local public bodies have undertaken positive programs (through the adoption, modernization, administration, and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation, and safety for buildings, including the use and occupancy of dwellings) for (1) preventing the spread of recurrence in the community of slums and blighted areas, and (2) encouraging housing cost reductions through the use of appropriate new materials, techniques, and methods in land and residential planning, design, and construction, the increase of efficiency in residential construction, and the elimination of restrictive practices which unnecessarily increase housing costs.

"(b) In the administration of this subchapter, the Administrator shall encourage the operations of such local public agencies as are established on a State, or regional (within a State), or unified metropolitan basis or as are established on such other basis as permits such agencies to contribute effectively toward the solution of community development or redevelopment problems on a State, or regional (within a State), or unified metropolitan basis.

"(c) No contract shall be entered into for any loan or capital grant under this subchapter • • • unless (1) there is presented to the Administrator by the locality a workable program (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neigh-

borhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program, and (2) on the basis of his review of such program, the Administrator determines that such program meets the requirements of this subsection and certifies to the constituent agencies affected that the Federal assistance may be made available in such community. . . ."

Title I, Section 102 of the Housing Act of 1949, 63 Stat. 414, as amended, 42 U.S.C. § 1452.

"(a) To assist local communities in the elimination of slums and blighted or deteriorated or deteriorating areas, in preventing the spread of slums, blight or deterioration, and in providing maximum opportunity for the redevelopment, rehabilitation, and conservation of such areas by private enterprise, the Administrator may make temporary and definitive loans to local public agencies in accordance with the provisions of this subchapter for the undertaking of urban renewal projects. . . .

"(d) The Administrator may make advances of funds to local public agencies for surveys of urban areas to determine whether the undertaking of urban renewal projects therein may be feasible and for surveys and plans for urban renewal projects which may be assisted under this subchapter, including, but not limited to, (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, (ii) plans for the

enforcement of State and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (iii) appraisals, title searches, and other preliminary work necessary to prepare for the acquisition of land in connection with the undertaking of such projects. * * *"

Title I, Section 105 of the Housing Act of 1949, 63 Stat. 416, as amended, 42 U.S.C. § 1455.

"Contracts for loans or capital grants shall be made only with a duly authorized local public agency and shall require that—

"(a) The urban renewal plan for the urban renewal area be approved by the governing body of the locality in which the project is situated, and that such approval include findings by the governing body that (i) the financial aid to be provided in the contract is necessary to enable the project to be undertaken in accordance with the urban renewal plan; (ii) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (iii) the urban renewal plan conforms to a general plan for the development of the locality as a whole;

"(b) When real property acquired or held by the local public agency in connection with the project is sold or leased, the purchasers or lessees and their assignees shall be obligated (i) to devote such property to the uses specified in the urban renewal plan for the project area; (ii) to begin within a reasonable time any improvements on such property required by the urban renewal plan; and (iii) to comply with such other conditions as the Admin-

istrator finds, prior to the execution of the contract for loan or capital grant pursuant to this subchapter, are necessary to carry out the purposes of this title * * *;

"(c) There be a feasible method for the temporary relocation of families displaced from the urban renewal area, and that there are or are being provided, in the urban renewal area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the urban renewal area, decent, safe, and sanitary dwellings equal in number to the number of and available to such displaced families and reasonably accessible to their places of employment.

"(d) No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing."

Title I. Section 110 of the Housing Act of 1949, 63 Stat. 420, as amended, 42 U.S.C. § 1460.

"(a) 'Urban renewal area' means a slum area or a blighted deteriorated, or deteriorating area in the locality involved which the Administrator approves as appropriate for an urban renewal project.

"(b) 'Urban renewal plan' means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan of the locality as a whole and the workable program referred to in section 1451 of this title and shall be consistent with definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements; and (2) shall be sufficiently complete to indicate such

land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, and building requirements.

"(c) 'Urban renewal project' or 'project' may include undertakings and activities of a local public agency in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof, in accordance with such urban renewal plan. Such undertakings and activities may include—

(1) acquisition of (i) a slum area or a deteriorated or deteriorating area, or (ii) land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community, or (iii) open land necessary for sound community growth which is to be developed for predominantly residential uses: *Provided*, That the requirement in paragraph (a) of this section that the area be a slum area or a blighted, deteriorated or deteriorating area shall not be applicable in the case of an open land project;

(2) demolition and removal of buildings and improvements;

(3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this subchapter in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area (including sale, initial leasing or retention by the local public agency itself) at its fair value for uses in accordance with the urban renewal plan; • • •

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, • • • or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities. • • •

• • •

"In addition to all other powers hereunder vested, where land within the purview of clause (1) (ii) or (1) (iii) of the first paragraph of this subsection (whether it be predominantly residential or nonresidential in character) is to be redeveloped for predominantly nonresidential uses, loans and advances under this subchapter may be extended therefor if the governing body of the local public agency determines that such redevelopment for predominantly nonresidential uses is necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives and to afford maximum opportunity for the redevelopment of the project area by private enterprise; • • •."

Section 5, Administrative Procedure Act of 1946, 60, Stat. 239, 5 U. S. C. § 1004.

"In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, • • •

"(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place and nature thereof; (2) the legal authority and jurisdiction under

which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

"(b) The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 1006 and 1007 of this title.

"(c) The same officers who preside at the reception of evidence pursuant to section 1006 of this title shall make the recommended decision or initial decision required by section 1007 of this title except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party or any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency . . .

"(d) The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty."

APPENDIX "B"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 184—October Term, 1958.

(Argued December 8, 1958 Decided January 16, 1959.)

Docket No. 25358

WILLIAM GART, *et al.*,
Plaintiffs-Appellants.

—v.—

ALBERT M. COLE, *et al.*,
Defendants-Appellees.

Before:

CLARK, *Chief Judge*, and
HINCKS and LUMBARD, *Circuit Judges.*

Appeal from the United States District Court for the Southern District of New York, Edward J. Dimock, *Judge*.

Plaintiffs, property owners and residential and business tenants in the vicinity of the Lincoln Square Urban Renewal Project in New York City, appeal from a summary judgment for defendants, D. C. S. D. N. Y., 166 F. Supp. 129, which dismissed their action against various federal and city officials and parties in interest to enjoin the execution of the Project on the ground of its asserted invalidity. Affirmed.

Appendix "B"

DAVID I. SHAPIRO, of Dickstein, Shapiro & Friedman, New York City (Harris L. Present, New York City, and Sidney Dickstein and Arthur J. Galligan, of Dickstein, Shapiro & Friedman, New York City, on the brief), *for appellants.*

MORTON S. ROBSON, Asst. U. S. Atty., S. D. N. Y., New York City (Arthur H. Christy, U. S. Atty., and John A. Guzzetta, Asst. U. S. Atty., New York City, on the brief), *for appellees Albert M. Cole and Walter S. Fried,*

ANTHONY CURRERI, New York City (Charles H. Tenney, Corp. Counsel, City of New York, and Leo A. Larkin, Pauline K. Berger, and Benjamin Offner, New York City, on the brief), *for appellees City of New York, Robert F. Wagner, et al.*

EDWARD D. BURNS, of Saxe, Bacon & O'Shea, New York City (Porter R. Chandler and William R. Meagher, New York City, and Martin Fogelman, of Saxe, Bacon & O'Shea, New York City, on the brief), *for appellee Fordham University.*

WILLIAM ELDRED JACKSON, of Milbank, Tweed, Hope & Hadley, New York City (Rebecca M. Cutler, of Milbank, Tweed, Hope & Hadley, New York City, on the brief), *for appellee Lincoln Center for the Performing Arts, Inc.*

ROSENMAN, GOLDMARK, COLIN & KAYE, New York City, *for appellee Webb & Knapp Lincoln Square Corp.*

Appendix "B"

CLARK, *Chief Judge*:

This is the fifth of a prolonged series of actions attacking the validity of the Lincoln Square Urban Renewal Project, a slum redevelopment project of the City of New York partially financed by federal funds under Title I of the Housing Act of 1949, 42 U. S. C. §§ 1441 *et seq.* Appellants, property owners and residential and business tenants in the Project area, instituted this action as individuals and on behalf of all others similarly situated just seven days after the Supreme Court denied certiorari in *64th Street Residences* v. *City of New York*, 4 N. Y. 2d 268, 150 N. E. 2d 396, certiorari denied *Harris* v. *City of New York*, 357 U. S. 907, the first of the previous actions to proceed to final judgment on the merits.[1] Although none of the appellants were named as parties plaintiff in that action, all are members of the classes there represented. And appellees here, with the exception of Albert M. Cole, sued as Administrator of the Federal Housing and Home Finance Agency, and Walter S. Fried, sued as Regional Administrator of that agency, were defendants in the *64th Street Residences* case. This appeal questions the district court's denial of appellants' motion for temporary injunction and entry of summary judgment in favor of all of the appellees. In a reasoned opinion, D. C. S. D. N. Y., 166 F. Supp. 129, the court below held appellants' claims against all but the FHHFA officials barred by the judgment in the *64th Street*

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[1] Two actions, instituted in the Supreme Court of New York, before the New York City Board of Estimate approved the Project, were dismissed as premature. *Loebner* v. *City of New York*, S. Ct., 162 N. Y. S. 2d 233; *89 Amsterdam Ave. Corp* v. *City of New York*, S. Ct., N. Y. County, N. Y. L. J., Nov. 13, 1957, p. 7. During the pendency of the appeal in the *64th Street Residences* case a fourth action was instituted in the court below. *Cohen* v. *City of New York*, D. C. S. D. N. Y., Civ. No. 130-164. Stayed pending final determination of the state case, it was dismissed by Judge Dimock on the same date that he dismissed the complaint herein. D. C. S. D. N. Y., N. Y. L. J., Aug. 7, 1958, p. 7.

Residences case and found no validity in the claims against those officials.

There is no dispute here that the claims asserted in this action against defendants other than Cole and Fried are identical with those unsuccessfully raised against these same parties in the prior New York action. In both suits the Project was attacked on the grounds that Fordham University's participation as a Project sponsor violated the principle of separation of church and state, as embodied in the First Amendment to the United States Constitution and made applicable to the City through the Fourteenth Amendment, and that the City's negotiation of minimum bids to be made by the sponsors at a subsequent public auction was unlawful. As members of the classes of plaintiffs represented in the *64th Street Residences* case, appellants are barred by the judgment there from relitigating these issues with these defendants in the New York courts. *Ashton* v. *City of Rochester*, 133 N. Y. 187, 195, 30 N. E. 965, 31 N. E. 334, 28 Am. St. Rep. 619; *People's Gas & Elec. Co. of Oswego* v. *City of Oswego*, 207 App. Div. 134, 202 N. Y. S. 243, affirmed 238 N. Y. 606, 144 N. E. 911; *Campbell* v. *Nassau County*, 192 Misc. 821, 82 N. Y. S. 2d 179, affirmed 274 App. Div. 929, 83 N. Y. S. 2d 511. And the full-faith-and-credit clause requires a federal court to give equal effect to that judgment as a bar to relitigation of these issues. *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 86 A. L. R. 298; *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, 150 A. L. R. 413. See also *McIntosh* v. *City of Pittsburgh*, C. C. W. D. Pa., 112 Fed. 705.[2]

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[2] *Howard* v. *Ladner*, D. C. S. D. Miss., 116 F. Supp. 783, vacated *White* v. *Howard*, 347 U. S. 910, appears in error in the suggestion that F. R. 23(a)(1), rather than the full-faith-and-credit and due-process clauses of the Constitution, governs any question of federal limitation on the effect of the state judgment as *res judicata*. Neither the Federal Rules of Civil Procedure nor cases interpreting them, such as *Dickinson* v. *Burnham*, 2 Cir., 197 F. 2d 973, certiorari denied 344 U. S. 875, show any intent (even were it permissible) to place limits on state procedure.

Appendix "B"

It is to be noted that the very holding in *American Surety Co.* v. *Baldwin, supra*, 287 U. S. 156, 86 A. L. R. 298, negates the strained inference appellants draw from *Angel* v. *Bullington*, 330 U. S. 183, that a state court decision has less than its usual effect as *res judicata* where constitutional questions were decided and no appeal of right to the Supreme Court was available. Nor did the Sixth Circuit, as appellants suggest from their reading of *Trailmobile Co.* v. *Whirls*, 6 Cir., 154 F. 2d 866 (reversed on other grounds in 331 U. S. 40), render all state court decisions on questions of federal law a nullity in the federal courts. The court's statement, 154 F. 2d 866, 871, that "The interpretation by the state court of the rights of a citizen under a federal statute is not binding upon the federal courts" properly relates only to the impact of a state decision as *stare decisis*, not as *res judicata*—a distinct question which the court there correctly answered with its holding that the plaintiff had been neither party nor privy to the state court's judgment.

Nor is there valid constitutional objection to holding appellants bound by the *64th Street Residences* judgment. All had ample notice of the suit; parties plaintiff there had no interests contrary to appellants in this action; and the same counsel prosecuted both suits. To the general rule that only persons subject to a court's jurisdiction are bound by its judgment, there has long been an exception for suits of a representative character. *Smith* v. *Swormstedt*, 57 U. S. 288, 16 How. 288; *Gibbs* v. *Buck*, 307 U. S. 66; *Hansberry* v. *Lee*, 311 U. S. 32, 132 A. L. R. 741. True, the courts in practice have narrowly delimited this exception lest persons be improperly denied their day in court. But this in federal procedure has been more a decision as to proper rule-making than an application of constitutional principle.

Thus under the Federal Rules the legal development has been that, except for the disposition of specific property,

only judgments in action under F. R. 23(a)(1)—the so-called "real" class actions—are binding on members of the classes represented who are not parties. See, e.g., *Dickinson* v. *Burnham*, 2 Cir., 197 F. 2d 973, 979, certiorari denied 344 U. S. 875; *Oppenheimer* v. *F. J. Young & Co.*, 2 Cir., 144 F. 2d 387, 390. As the *Dickinson* case points out, this view has been criticized, notably by text writers, as not going to the extent permitted by constitutional due process. For the Constitution requires at most only that "for any * * * reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." *Hansberry* v. *Lee, supra*, 311 U. S. 32, 43. Also of paramount relevance is the well-known suggestion of Chief Justice Stone in this case that a judgment may be constitutionally based on notice alone. 311 U. S. 32, 40. But, beyond all this, the *64th Street Residences* judgment was in an action typically "real"; and we see no reason to think that it would not have been binding, whatever its origin. See 3 Moore's Federal Practice ¶23.11, at n. 5 (2d Ed. 1948), and authorities there cited; and see generally cases collected in the annotations in 20 A. L. R. 1133 and 64 A. L. R. 1262.

There remains to be considered the dismissal of the claims against appellees Cole and Fried, the Administrator and Regional Administrator of the FHHFA. Appellants asserted basically three claims against them: (1) that the FHHFA's participation in the Lincoln Square Urban Renewal Project constitutes an unconstitutional subsidy to a religious institution; (2) that the sale by the City of portions of the Project area to sponsors at negotiated minimum bids was a failure to comply with §§ 106(c)(7) and 110(c)(4) of the Housing Act of 1949, 42 U. S. C. §§ 1456(c)(7), 1460(c)(4); and (3) that the Administrator illegally denied various residential tenants, including some appellants, an oral hearing in which to challenge the feasibility of the

City's relocation plan. The first claim but repeats the one so strongly asserted against the City and the Project sponsors in the state case. The First Amendment's requirement of the separation of church and state applies equally to the state and the Federal Government. *Zorach* v. *Clauson*, 343 U. S. 306, 309; *Everson* v. *Board of Ed. of Ewing Township*, 330 U. S. 1, 15, 168 A. L. R. 1392; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303, 128 A. L. R. 1352. As to both governments, the basic issue concerns the transaction between the City and Fordham University. Moreover, the City's use of federal funds was considered by the New York Court of Appeals in its opinion in *64th Street Residences* and was heavily stressed by the plaintiffs there in the petition for certiorari. And as a practical matter, the relief appellants seek in this action against the FHHFA will curtail the progress of the Lincoln Square Urban Renewal Project as effectively as the direct injunctive relief against the active Project participants unsuccessfully sought in the New York courts. These appellees have once successfully litigated this issue to a final judgment. In these circumstances there can be no doubt but that the New York courts would not permit this relitigation of the same issue. *Israel* v. *Wood Dolson Co.*, 1 N. Y. 2d 116, 134 N. E. 2d 97; *Good Health Dairy Products Corp. of Rochester, N. Y.* v. *Emery*, 275 N. Y. 14, 9 N. E. 2d 758, 112 A. L. R. 401. See also *Kessler* v. *Eldred*, 206 U. S. 285. Hence it is barred here.

Inasmuch as the remaining claims against the FHHFA were not and could not have been litigated in the *64th Street Residences* action, see 4 N. Y. 2d 268, 276-277, 150 N. E. 2d 396, they are not barred by the judgment therein. Moreover, the district court correctly ruled that it had sufficient jurisdiction over the officers of the FHHFA to consider these claims. As the Supreme Court has noted, the determination of the proper party defendant for review or challenge of administrative action is a matter "compounded of

confusion and artificialities." *Snyder* v. *Buck*, 340 U. S. 15, 22. The opinion of the court below seems admirably to reduce the unavoidable formality here to a considerable extent. In his carefully reasoned opinion Judge Dimock held that a suit against Cole, in his capacity of Administrator was in actuality brought against the FHHFA, and that adequacy of service of process should be determined as with suits against corporations, rather than those against individuals. Accordingly, service on Fried, the Regional Administrator of the FHHFA, at his office in New York where the agency was "doing business" was deemed sufficient to give the court jurisdiction over all indispensable parties. There is some support for this view, principally among the more recent decisions. See authorities cited 166 F. Supp. 129, 133. And there is considerable merit in its recognition that suits such as this are against an agency rather than an individual. See 3 Davis, Administrative Law Treatise § 27.07 (1958). But there is no need to adopt that reasoning definitively here. For the identic result is firmly grounded in authority. Whether personal service on Cole is indispensable turns on essentially "practical considerations." *Shaughnessy* v. *Pedreiro*, 349 U. S. 48. Here all the underlying facts of the action are peculiarly local, and this case's resolution will have a predominantly local impact. Moreover, plaintiffs seek merely to restrain official action, not to compel an official to take some action for their benefit. In such a case service on the official sought to be enjoined—here Fried—is all that is required. *Hynes* v. *Grimes Packing Co.*, 337 U. S. 86, 96-97; *Williams* v. *Fanning*, 332 U. S. 490. Without denying that Fried is presently authorized to pay the funds to the City, the FHHFA contends that Cole is indispensable to this litigation because he has power to appoint another official to dispense these funds. We cannot assume, however, that the Administrator would so lightly disregard the decision of this court. *Shaughnessy* v.

Pedreira, supra, 349 U. S. 48, 53. And see *Sunshine Anthracite Co.* v. *Adkins*, 310 U. S. 381, 402-403. *Heyward* v. *Public Housing Administration*, 5 Cir., 238 F. 2d 689, does not support the FHHFA's contentions here, for in that case the local officer defendant established as a fact that he was not then authorized to handle the disbursements sought to be enjoined.

Little can be added to Judge Dimock's careful discussion of appellants' claims against the FHHFA. Appellants find standing to assert these claims in § 10(a) of the Administrative Procedure Act, 5 U. S. C. § 1009(a). This section leans heavily on existing law, since its requirements, that the person seeking review have suffered "legal wrong" or have been "adversely affected or aggrieved by such action within the meaning of any relevant statute," have well established meanings. See *Kansas City Power & Light Co.* v. *McKay*, D. C. Cir., 225 F. 2d 924, 931-932, certiorari denied 350 U. S. 884. Appellants clearly have no standing to assert that the City's sponsorship agreements violate the Housing Act's alleged requirement of open bidding on all property sold as part of the Project. Assuming that such a requirement may be read into 42 U. S. C. §§ 1456(c)(7) and 1460 (c)(4), these sections seem designed to protect not the interests of landowners or tenants in a redevelopment area, but those of the public at large. Appellants cannot challenge this expenditure of funds as representatives of so broad an interest. *Massachusetts* v. *Mellon*, 262 U. S. 447. See also *Allied-City Wide, Inc.*, v. *Cole*, D. C. Cir., 230 F. 2d 827.

Plaintiffs do have standing in this action to challenge the Administrator's refusal to grant them an oral hearing on the feasibility of the City's relocation plan. But there is no basis, statutory or otherwise, for the right to appear and be heard before the Administrator which appellants claim. Appellants find this right in §101(c)(iv) of the Housing Act of 1949, 42 U. S. C. § 1451(c)(iv), which pro-

scribes delegation by the Administrator of his reviewing function. Unless residents are granted a hearing, they contend, the Administrator's determination can be based on only those facts which the city chooses to furnish him and is thus not an independent review of the relocation plan. But the Act expressly requires public hearings before the local authority actually engaged in formulating the relocation plan. In view of the necessarily limited utility of a second hearing before the Administrator, who is charged only with assuring this plan's compliance with minimum standards, lesser efforts by the Administrator would seem adequate. Here the FHHFA afforded appellants opportunity to submit documentary information on the plan's feasibility. More than this the Housing Act does not require. See §4(b) of the Administrative Procedure Act, 5 U. S. C. § 1003(b).

Appellants further contend that the nature of the matters reviewed and the impact upon appellants of the Administrator's approval of the relocation plan render his review "a case of adjudication required by statute to be determined upon the record after opportunity for agency hearing" within the scope of §5 of the Administrative Procedure Act, 5 U. S. C. § 1004. Since no express requirement of an open adjudicative hearing is contained in the Housing Act, appellants necessarily rely upon the implication of such a requirement from the nature and effect of the determination to be made. See *Wong Yang Sung* v. *McGrath*, 339 U. S. 33. But here the purpose of the proceeding is to determine the compliance with federal standards of a general plan for the relocation not of individuals, but of a group within a geographically defined area. The impact of the determination is upon the group, not upon individuals, and, as would normally be the case in Title I proceedings, the number of residents affected by the relocation proposals and therefore within the group is quite large. Compare *Londoner* v. *City and County of Denver*, 210 U. S. 373, with *Bi Metallic*

Inv. Co. v. *State Board of Equalization*, 239 U. S. 441. In such a case the determination is not such an adjudication of individual interests as may justify the implied application of § 5 of the Administrative Procedure Act, 5 U. S. C. § 1004. The Administrator's review of the proposal for relocation here lacks the direct impact of the deportation of an alien in *Wong Yang Sung* v. *McGrath*, *supra*, 339 U. S. 33, or the denial of a certificate of public convenience to a public carrier in *Riss & Co.* v. *United States*, 341 U. S. 907, or the denial of an individual citizen's right to use the mails in *Cates* v. *Haderlein*, 342 U. S. 804, and *Door* v. *Donaldson*, D. C. Cir., 195 F. 2d 764—cases on which appellants rely. Thus this review is not a "case of adjudication" within the quoted words of § 5 of the Administrative Procedure Act, 5 U. S. C. § 1004.

At times appellants seem to assert that the Administrator did in fact delegate his duty to review the feasibility of the Lincoln Square Urban Renewal Project's relocation provisions. As 42 U. S. C. § 1451(c)(iv) is in protection of the interests of displaced residents such as appellants, they have standing to raise this claim. But summary judgment was properly entered here, too; for appellants presented no proof whatsoever of such misconduct by the Administrator apart from the fact that they were refused an oral hearing.

Affirmed.